IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.321 of 2002

Shri Keru Rama Bagad since deceased
through LRS
Smt.Kamlabai Keru Bagad and Ors..Appellants

V/s

M/s Kelkar Company .. Respondent

K.K.Malpathal for Appellants
Shri R.D.Dhanuka i/b A.R.Dhanukam for Respondents

CORAM:S.R.SATHE,J.

DATED:7th October 2005

P.C.:-

1. Heard both the learned Advocates.

2. Shri Malpathak, learned Advocate for the appellants submitted that the plaintiff be allowed to withdraw the suit with permission to file fresh suit on the same cause of action. This submission in this behalf is opposed by the learned Advocate for the Defendant-Respondent. It was argued on behalf of the plaintiff that the proceedings initiated under Section 32G of the B.T. & A.L.Act are pending, when the suit was filed the Appellant plaintiff was snot aware of the same. So under such circumstances it is necessary to withdraw the suit. Firstly, it is very difficult

to believe that the plaintiff Appellant had no knowledge about 32G proceedings in which he was involved. Moreover, granting permission as prayed at this stage would amount to putting premium on plaintiff's lethargy and allowing him to have second round of litigation. No justifiable cause to grant permission as prayed, hence submission in that behalf is rejected.

3. Turning to the merits of the case, it appears that the plaintiff had filed suit for possession alleging that the defendant has made encroachment in his land. Plaintiff also claimed damages for the same. The defendant filed written statement and challenged plaintiff's title to the suit property. The learned trial Court came to the conclusion that the plaintiff has failed to prove his title to the suit land as well as the alleged encroachment , naturally his suit was dismissed. The first appellate court confirmed the said findings. Both the courts below properly appreciated the evidence and rightly dismissed the plaintiff's suit. There is no error of law committed by the Courts below. Thus it is clear that no substantial question of law is involved in the present appeal. Hence the appeal is dismissed in limine.

(S.R.SATHE,J.)